

Filed July 16, 2009

REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matter of

MICHAEL S. CANTARUTTI

A Member of the State Bar.

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No. 07-O-11999

OPINION ON REVIEW

I. SUMMARY

This case involves unauthorized attorney contact with a represented party. The State Bar Office of Chief Trial Counsel (State Bar) has charged that Michael S. Cantarutti violated the Rules of Professional Conduct¹ by personally serving a deposition notice on a represented party and then asking questions of that party. The hearing judge found Cantarutti culpable of making unauthorized contact by serving the deposition notice, but concluded he did not ask any questions while serving the notice. Based on Cantarutti's two prior discipline records, the hearing judge recommended that he be suspended from the practice of law for three years, stayed, and placed on probation with an 18-month actual suspension.

Cantarutti seeks review, contending that he is not culpable of misconduct because he was authorized by law to serve the deposition notice and he did not ask questions of the represented party. He asserts that any culpability found by this court warrants no more than a private or public reprimand. The State Bar requests that we adopt the recommended discipline if we conclude, as the hearing judge did, that Cantarutti is culpable only for serving the deposition

¹Unless otherwise noted, all further references to "rules" are to the Rules of Professional Conduct.

notice. However, if we find that Cantarutti also questioned the represented party, the State Bar urges disbarment.

We have independently reviewed the record² and adopt the hearing judge's findings, except that we do not find lack of harm or good faith as factors in mitigation. We agree with and affirm the hearing department's recommended discipline.

II. FINDINGS OF FACT³

Cantarutti was admitted to practice law in California in June, 1992. He was previously disciplined twice, as discussed in detail below. In 1999, he served a six-month suspension and in 2003, he served a one-year suspension. The present charges involve Cantarutti's actions while representing the husband in a marital dissolution case.

Dawna Kissmann (Dawna) and Douglas Kissmann (Douglas) obtained a judgment for dissolution of their marriage. Thereafter, Dawna became engaged to Shawn Caulfield. Caulfield and Douglas met in early 2007, and Caulfield gave Douglas his telephone number. The two saw each other occasionally, had at least one lengthy telephone conversation and communicated via text messages.

After the judgment of dissolution was entered, the parties hired attorneys to handle issues of child custody and visitation since Dawna was contemplating relocation. Douglas hired Cantarutti. During their initial meeting, Douglas gave Caulfield's full name and phone number to Cantarutti. Dawna hired Julianne Major, who filed a substitution of attorney that was served on Cantarutti. On May 8, 2007, the parties and their respective attorneys attended a court hearing. There is no dispute that Cantarutti knew that Major represented Dawna. Two days

²*In re Morse* (1995) 11 Cal.4th 184, 207.

³Cantarutti alleges that the hearing transcript does not accurately reflect the trial testimony. We do not address this contention because he failed to provide citations in his brief to the alleged inaccuracies. (See Rules Proc. of State Bar, rule 302(a) [appellant's brief must include references to record to support claims].)

later, without notifying Major, Cantarutti went to Dawna's place of employment where she worked as a bookkeeper and personally served her with a deposition notice. Dawna was at the front reception area when Cantarutti arrived, and a conversation between them ensued. At this point, the evidence presented at trial differs greatly.

Cantarutti testified as follows: He went to Dawna's place of employment to serve her with the deposition notice because "time was of the essence" and her workplace was near his office. He approached Dawna and handed her the notice, stating, "This is for you." Dawna asked him what it was, and he told her that he could not talk about the case and she should discuss it with her attorney. Dawna asked Cantarutti to wait for her to read the document, which he did, and then she asked, "What if this date doesn't work?" Cantarutti answered, "That's something you'll have to talk to your attorney about because again, I can't talk to you about the case," and left the office. He estimated that this encounter lasted no more than 30 seconds.

Dawna testified as follows: Cantarutti unexpectedly appeared at her workplace. He explained that he was there to serve her with a deposition notice. He told Dawna that she had to come to his office for the deposition. Cantarutti then said something to the effect of, "While I'm here, why don't I just get your boyfriend's name and address and phone number?" Dawna provided this information to Cantarutti, and he left. She then immediately reported the contact to her attorney. Dawna estimated that the encounter lasted about five minutes.

Two of Dawna's co-workers, Isabel Franchini and Rhonda Gold, were present when Cantarutti arrived. While both observed the encounter, neither heard the discussion between Cantarutti and Dawna. Franchini and Gold testified that the conversation took five to ten minutes, and that Dawna was upset after Cantarutti left.

III. CULPABILITY

Cantarutti is charged with one rule 2-100(A) violation (communicating with a represented party)⁴ for two acts of misconduct. The State Bar claims that serving the deposition notice on Dawna and then asking her questions about the case constitute separate violations of the rule.

In order to fully analyze Cantarutti's alleged misconduct, we explore the public policy behind rule 2-100. Our research reveals that the rule has a simple mission – it is intended to control communications between an attorney for one side of a case and a represented party on the other side. We have previously noted the rule's therapeutic nature since it is designed to shield a represented party from an attorney's approaches which are either deliberately improper or well-meaning but misguided. (*In the Matter of Wyshak* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70, 81.) Indeed, rule 2-100 serves a crucial ethical purpose as it “prevents an attorney from taking advantage of an opposing party in the absence of his or her counsel and preserves the integrity of the attorney-client relationship.” (Vapnek, et al., Cal. Practice Guide: Professional Responsibility (The Rutter Group 2008) § 8:318, pp. 8-53.)⁵ We review the record with this public policy in mind.

⁴Rule 2-100(A) provides as follows: “While representing a client, a member shall not communicate directly or indirectly about the subject of the representation with a party the member knows to be represented by another lawyer in the matter, unless the member has the consent of the other lawyer.”

⁵See also *Mitton v. State Bar* (1969) 71 Cal.2d 525, 534 [The no-contact rule “was designed to permit an attorney to function adequately in his proper role and to prevent the opposing attorney from impeding his performance in such a role.”]; *In the Matter of Dale* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 798, 806, citing *United States v. Lopez* (9th Cir. 1993) 4 F.3d 1455, 1459 [“The rule against communicating with a represented party without the consent of that party's counsel shields a party's substantive interests against encroachment by opposing counsel and safeguards the relationship between the party and her attorney.”]

A. Cantarutti’s Personal Service of the Notice of Deposition (Rule 2-100(A))

We adopt the hearing judge’s finding that Cantarutti was not authorized to personally serve Dawna with the deposition notice, and that such service constitutes a communication with a represented party, in violation of rule 2-100(A). Cantarutti makes numerous challenges to this finding, each of which we find to be without merit.

Cantarutti asserts that he was authorized by statute to personally serve Dawna with the deposition notice. He argues that Code of Civil Procedure section 1015,⁶ upon which the hearing judge relied, is not applicable and that sections 1010,⁷ 1011,⁸ and 1014⁹ support his position. This argument fails. Notices or other papers may be served on the party or on the party’s attorney in the manner set forth by the provisions of the code relating to notices, “when not otherwise provided” by law. (Code Civ. Proc., § 1010 et seq.) This broad provision for service on the party or attorney must be read in connection with the specific requirement of section 1015 that *in cases where a party has an attorney*, “the service of papers, when required, must be upon the attorney instead of the party, except service of subpoenas, of writs, and other process issued in the suit, and of papers to bring the party in contempt.” (See *In re Nelson’s Estate* (1900) 128 Cal. 242, 243-244 [§ 1015 requires all *notices* be served on attorney when party is represented by

⁶Section 1015 provides, in relevant part, that “When a plaintiff or a defendant, who has appeared, resides out of the state, and has no attorney in the action or proceeding, the service may be made on the clerk of the court, for that party. But in all cases where a party has an attorney in the action or proceeding, the service of papers, when required, must be upon the attorney instead of the party, except service of subpoenas, of writs, and other process issued in the suit, and of papers to bring the party into contempt...” Unless otherwise noted, all further references to “section(s)” are to the Code of Civil Procedure.

⁷Section 1010 provides, in relevant part, that “Notices and other papers may be served upon the party or attorney in the manner prescribed in this Chapter when not otherwise provided by this Code.”

⁸Section 1011 provides, in relevant part, that “service may be personal, by delivery to the party or attorney on whom service is required to be made. . . .”

⁹Section 1014 provides, in relevant part, that “After appearance, a defendant or the defendant’s attorney is entitled to notice of all subsequent proceedings of which notice is required to be given.”

counsel].) As of January 1, 2007, the California Rules of Court specifically require that service of legal documents must be made on the attorney of a represented party.¹⁰

Cantarutti also incorrectly asserts that he was authorized to serve the deposition notice because section 1015 applies to service when a party resides out of state. Only the first sentence of section 1015 applies to non-resident parties and permits service on the court clerk. However, section 1015 continues on to require, with certain exceptions, that in all other cases, service of papers must be on the attorney when a party is represented. Courts have “always treated this section (except the first sentence thereof which, clearly, applies only to nonresidents) as applicable to all litigants, resident and nonresident alike.” (*Lyydikainen v. Industrial Accident Commission* (1939) 36 Cal.App.2d 298, 301-302.)

Cantarutti further contends that sections 414.10, 2025.220 et seq. and 1987 gave him authority to personally serve Dawna. These sections are inapplicable to this case. Section 414.10 applies only to service of a summons. Section 2025.220 et seq. does not apply to service of a deposition notice. Section 1987, subdivision (a) refers to the service of a *subpoena* to compel attendance of a *non-party witness* at a deposition, and section 1987, subdivision (b) provides for the service of a *notice* on a party’s attorney to compel the *party* to appear at a deposition. (2 Witkin, Cal. Evidence (4th ed. 2000) Witnesses, § 26, p. 282 and § 36, p. 287.)

Cantarutti claims that personally serving the notice was not an “improper communication” but a “required legal notice served upon a party to require that party’s attendance” at a deposition. He reasons that such notices are legal process that may be issued by an attorney acting as an officer of the court and then served by the attorney on a party. This argument is without merit. A notice of deposition is not a legal process as defined by the Code of Civil Procedure, but rather “the word ‘process’ signifies a writ or summons issued in the

¹⁰ “Whenever a document is required to be served on a party, the service must be made on the party’s attorney if the party is represented.” (Cal. Rules of Court, rule 1.21(a).)

course of judicial proceedings.” (Code Civ. Proc., § 17, subd. (b)(6).) Further, a notice is not a subpoena, but an alternative mechanism to require a party’s attendance at a deposition. It is to be served on the attorney if the party is represented. The deposition notice Cantarutti served is neither legal process nor a subpoena and does not qualify as one of the exceptions to section 1015.¹¹

Finally, Cantarutti argues that he did not violate rule 2-100 because he did not intend to induce a verbal exchange with Dawna when he served the deposition notice. Regardless of his intent, the fact of serving the deposition notice constituted a communication about the subject of the representation (Dawna’s dissolution) and is therefore a violation of rule 2-100(A). The notice improperly communicated information directly to Dawna by setting out the details of the deposition, which included the time, date, method of recording (by stenograph or videotape) and location, listed as Cantarutti’s office. (See *Shalant v. State Bar* (1983) 33 Cal.3d 485, 489 [improper communication with represented party where attorney requests contact through third person for purpose of settlement discussions]; *In the Matter of Wyshak, supra*, 4 Cal. State Bar Ct. Rptr. at pp. 78-79 [improper communication with represented party where attorney advises party to attend court hearing or risk contempt of court].)

When Cantarutti personally served Dawna, he engaged in precisely the type of unauthorized contact between opposing counsel and a represented party that the rule is designed to prevent. Even if the contact were well-meaning, it was certainly misguided. Dawna was forced to deal personally with Cantarutti in his role as opposing counsel. His communication also interfered with the attorney-client relationship between Dawna and Major by depriving Major the opportunity to present and explain the deposition notice to Dawna. Moreover,

¹¹ Cantarutti also argues that the trial court erred by “calling the notice ...a letter.” In fact, the hearing decision simply analogizes the notice to a letter since both serve to communicate information. This comparison does not constitute error.

Cantarutti's personal contact with Dawna was upsetting to her, created the potential for further misconduct and set the stage for the State Bar's allegations that Cantarutti improperly questioned Dawna.

We have carefully considered Cantarutti's arguments that he had authority to personally serve Dawna. Having deemed each to be without legal merit, we conclude that Cantarutti violated rule 2-100(A) by personally serving the deposition notice on Dawna when he clearly knew she was represented by counsel.

B. The Verbal Exchange Between Dawna and Cantarutti (Rule 2-100(A))

The hearing judge found that Cantarutti did not ask Dawna improper questions when he served her with the deposition notice. The State Bar alleges that Cantarutti asked Dawna for the address and telephone number of her fiancé and advised her about certain details in the notice. Since Cantarutti and Dawna testified to different versions of their encounter, the trial court correctly classified the issue as a question of credibility.

The hearing judge expressed concern with Dawna's credibility because her recollection of the conversation with Cantarutti varied over time. Dawna's counsel testified that Dawna called her after Cantarutti served the deposition notice, and reported that he had asked Dawna to provide her fiancé's name, address and phone number, what school her daughter planned to attend and where Dawna intended to work if she moved. However, during the deposition, Dawna testified that Cantarutti was in her office "long enough for at least one question from [Cantarutti]." The State Bar investigator testified that Dawna claimed that Cantarutti only asked her for Caulfield's address and phone number. Finally, at trial, Dawna testified that Cantarutti asked her for the name, address and phone number of her fiancé.

In contrast with Dawna's various versions of the encounter, the hearing judge found Cantarutti's recollection of the conversation to be "generally credible." We defer to the hearing

judge's well-articulated findings of fact and corroborative evidence resolving the witness credibility issue in favor of Cantarutti. (See Rules Proc. of State Bar, rule 305(a); *Connor v. State Bar* (1990) 50 Cal.3d 1047, 1055.) Based on the great weight we assign to the hearing judge's credibility determination and on our own reading of the record, we find the State Bar failed to prove by clear and convincing evidence that Cantarutti asked Dawna any questions when he served the deposition notice.¹²

IV. DISCIPLINE

We determine the appropriate discipline in light of all relevant circumstances, including mitigating and aggravating circumstances. (*Gary v. State Bar* (1988) 44 Cal.3d 820, 828.) Cantarutti must establish mitigation by clear and convincing evidence (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e)),¹³ while the State Bar has the same burden of proof for aggravating circumstances. (Std. 1.2(b).)

A. Mitigation

In mitigation, the hearing judge found that Cantarutti's misconduct did not cause harm to Dawna. The State Bar challenges this finding. Standard 1.2(e)(iii) provides for mitigation if there is a lack of harm to the "person who is the object of the misconduct." Cantarutti testified that he did not observe whether Dawna was upset after he served her with the notice. However, according to Major, Dawna was "very upset" when she called and "might have even been crying." Franchini and Gold also testified that Dawna was upset after the encounter. While Cantarutti's misconduct did not rise to the level of causing "legally cognizable emotional harm"

¹²The State Bar alleges Major testified that Cantarutti called her office and apologized for *both* serving the notice *and* asking questions of Dawna. The record does not support this contention. In fact, Major testified that she could not recall details of her conversation with Cantarutti other than his general apology, and she did not specify whether the apology referenced serving the notice, asking questions of Dawna or both.

¹³Unless otherwise noted, all further references to "standards" are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

for aggravation, the contact significantly distressed Dawna. (See *Calvert v. State Bar* (1991) 54 Cal.3d 765, 784-785 [legally cognizable emotional harm not found in aggravation where no evidence of therapy, counseling or unusual symptoms of stress].) Therefore, because Cantarutti failed to prove by clear and convincing evidence that he did not cause emotional harm to Dawna, we assign no mitigation credit for lack of harm.

The hearing judge found in mitigation that Cantarutti had a good faith belief he was authorized to personally serve Dawna with the notice. (Std. 1.2(e)(ii).) The State Bar also challenges this finding. To establish good faith as a mitigating circumstance, an attorney must prove that his or her beliefs were both honestly held *and* reasonable. (*In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646, 653.) While Cantarutti may have had an honest belief that he was authorized to serve Dawna with the notice, that belief was not reasonable. He did no legal research to confirm his opinion nor did he consult with any other source prior to serving the notice. (See *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192, 202 [no mitigation credit for attorney's good faith belief that probation reports in discipline case were due only during actual suspension where attorney did not research issue, seek clarification from State Bar or Supreme Court or consult anyone about his interpretation].) We find that Cantarutti failed to establish clear and convincing evidence that he acted in good faith.

B. Aggravation

The parties do not dispute the hearing judge's aggravation finding that Cantarutti has been disciplined on two prior occasions. (Std. 1.2(b)(i).) We adopt this finding and detail Cantarutti's disciplinary record. In his first discipline, on May 19, 1999, the Supreme Court suspended Cantarutti from the practice of law for two years, stayed, and placed him on probation on condition of a six-month suspension. He had been found culpable of failing to promptly

deliver settlement funds to a client, charging an unconscionable fee, failing to promptly return a client's file, and filing a meritless suit in a client's name for Cantarutti's own pecuniary interest. In addition, the hearing judge found uncharged misconduct in aggravation because Cantarutti sent his former client a misleading settlement demand when he knew the client was represented by new counsel, in violation of rule 2-100.

In Cantarutti's second discipline, on December 5, 2003, the Supreme Court suspended him from the practice of law for two years, stayed, and placed him on probation on condition of a one-year actual suspension. He had been found culpable of two counts of failing to promptly refund unearned fees in violation of rule 3-700(D)(2), two counts of unauthorized practice of law in violation of Business and Professions Code sections 6125 and 6126, two counts of charging an unconscionable fee in violation of rule 4-200(A), splitting a fee for legal services in violation of rule 2-200, and failing to comply with conditions of his probation in violation of Business and Professions Code section 6068, subdivision (k).

C. Level of Discipline

The primary purpose of these disciplinary proceedings is not to punish the attorney but to protect the public, the courts, and the integrity of the legal profession. (Std. 1.3; *Bach v. State Bar* (1987) 43 Cal.3d 848, 856-857.) In determining the appropriate degree of discipline, we consider the standards, which serve as guidelines, as well as the facts and relevant case law. (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.)

Based on Cantarutti's prior record of discipline, the applicable standard is 1.7(b), which provides for disbarment of an attorney who has two prior disciplines "unless the most compelling mitigating circumstances clearly predominate." However, we are "not bound to follow the standards in talismanic fashion" and we may deviate from them in determining the most appropriate discipline considering all the proven facts and circumstances of a given matter.

(*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222); *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) “[W]hen considering the applicability of standard 1.7(b), the Supreme Court has placed great weight on whether or not there is a ‘common thread’ among the various prior disciplinary proceedings or a ‘habitual course of conduct’ which justifies disbarment. [Citation.]” (*In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 841.)

A wide range of discipline has been imposed on attorneys who have at least two prior records of misconduct. Cantarutti’s misconduct, however, has no pattern or common thread to all of the discipline matters. When assessing the appropriate discipline in these circumstances, the type and seriousness of misconduct involved in the current and prior discipline proceedings, the length of time since imposition of the prior discipline, and any mitigating and aggravating circumstances are considered.

In light of Cantarutti’s prior record of discipline and lack of mitigation in this case, we adopt the hearing judge’s recommended 18-month suspension.¹⁴ His previous misconduct was not remote in time, and he was actually suspended for one year in 2003. Moreover, he was found to have committed an uncharged violation of rule 2-100 in his first disciplinary proceeding in 1999. While we do not find that the rule 2-100 violations in 1999 and in this case establish a pattern or common thread, it is inexcusable that Cantarutti chose to serve the deposition notice on Dawna without fully exploring whether he had the legal authority to do so. Since this is Cantarutti’s third disciplinary case and his actions are similar to his previous misconduct, we recommend a greater period of suspension than that imposed in 2003. (Std. 1.7(a) [if member

¹⁴Without any prior record of discipline, Cantarutti’s misconduct could warrant discipline ranging from reproof to three months’ actual suspension. (See *Abeles v. State Bar* (1973) 9 Cal.3d 603 [public reprimand]; *Mitton v. State Bar, supra*, 71 Cal.2d 525, 534-535 [attorney’s communication with represented party “alone” justified three months’ actual suspension]; *Turner v. State Bar* (1950) 36 Cal.2d 155 [three months’ actual suspension].)

has one prior record of discipline, subsequent discipline shall be greater than that imposed in prior proceeding].

Cantarutti's latest misconduct reflects a lack of understanding of his professional responsibilities, even after prior disciplines should have motivated him to reflect on, and conform to, the ethical parameters of the legal profession. We therefore conclude that the 18-month actual suspension is appropriate and supported by comparable case law to ensure discipline proportionate to the misconduct. (See *Arm v. State Bar* (1990) 50 Cal.3d 763 [18-month actual suspension for commingling funds and failing to disclose suspension during court proceedings where mitigation for lack of harm and no bad faith, and aggravation for three prior records of discipline]; *In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523 [11-month actual suspension for probation violations where no mitigation but aggravation including four prior records of discipline]; *In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131 [one-year actual suspension for abandoning client, deceiving client about status of case and failing to participate in disciplinary proceedings where no mitigation but aggravation for two prior records of discipline].)

V. RECOMMENDATION

For the foregoing reasons, we recommend that Michael S. Cantarutti be suspended from the practice of law in California for three years, that execution of that period of suspension be stayed, and that he be placed on probation for three years subject to the following conditions:

1. He must be suspended from the practice of law for the first 18 months of probation;
2. Within 30 days after the effective date of discipline, he must contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, he must meet with the probation deputy either in-person or by telephone. During the period of probation, he must promptly meet with the probation deputy as directed and upon request;

3. He must submit written quarterly reports to the Office of Probation of the State Bar of California on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, he must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. If the first report will cover less than 30 days, that report must be submitted on the next following quarter date, and cover the extended period. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period;
4. Subject to the assertion of applicable privileges, he must answer fully, promptly, and truthfully, any inquiries of the Office of Probation which are directed to him personally or in writing, relating to whether he is complying or has complied with the conditions contained herein;
5. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including his current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, he must report such change in writing to the Membership Records Office of the State Bar and the State Bar's Office of Probation.
6. He must comply with the State Bar Act and the Rules of Professional Conduct.
7. Within one year after the effective date of the Supreme Court order in this matter, he must attend and satisfactorily complete the State Bar's Ethics School and provide satisfactory proof of such completion to the State Bar's Office of Probation in Los Angeles. This condition of probation is separate and apart from his California Minimum Continuing Legal Education (MCLE) requirements; accordingly, he is ordered not to claim any MCLE credit for attending and completing this course.
8. The period of probation will commence on the effective date of the Order of the Supreme Court imposing discipline in this matter. At the expiration of the period of this probation, if he has complied with all of the conditions of probation, the three-year period of stayed suspension will be satisfied and that suspension will be terminated.

We further recommend that Cantarutti be ordered to take and pass the Multistate Professional Responsibility Examination within one year after the effective date of the Supreme Court order in this matter and provide satisfactory proof of such passage to the State Bar's Office

of Probation in Los Angeles within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

We further recommend that he be ordered to comply with rule 9.20 of the California Rules of Court and perform the acts specified in subdivisions (a) and (c) of that rule, within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order herein. Failure to do so may result in disbarment or suspension.

Finally, we recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in section 6140.7 and as a money judgment.

PURCELL, J.

We concur:

REMKE, P. J.

EPSTEIN, J.